

Draft Minutes of the  
Delta Protection Commission  
Thursday, July 22, 2004

**1. Call to Order/Roll Call**

Chairman McCarty called the meeting to order at 6:40 p.m.

**Present:** Chairman McCarty, Commissioners Cabaldon, Coglianese, Johnson, Kelly, McGowan, Nottoli, Sanders, Shaffer, and van Loben Sels.

**Absent:** Commissioners Beltran, Calone, Curtis, Ferguson, Forney, Glover, Ornellas, Sturm, and Wilson.

**2. Public Comment**

There were no public comments.

**3. Minutes of the Last Meeting**

Commissioner Kelly asked that a redundant paragraph be removed from the minutes and a typo be fixed. Commissioner McGowan moved approval of the minutes with changes; Commissioner Cabaldon seconded. The minutes were approved by voice vote.

**4. Chairman's Report**

Chairman McCarty announced that the next meeting of the Delta Protection Commission is scheduled for Thursday, September 23, 2004, 6:30 p.m., Jean Harvie Community Center.

The Runquist Wines "R" 2002 Clarksburg Salmon Vineyard Petite Sirah was named "Best of Show" and the Dry Creek Vineyard 2003 Clarksburg Dry Chenin Blanc won an award at the State Fair's commercial wine competition;

The Courtland Pear Fair is scheduled for Sunday, July 25, 2004; and,

The Commission and public have been invited by Commissioner Curtis to tour the Department of Fish and Game's Yolo Bypass lands. The tour is scheduled on Thursday, August 26, 2004 at 6:30 p.m., and includes a viewing of the bats on their nightly flight.

**5. Commissioner Comments/Announcements**

Commissioner Coglianese reported that the State Water Resources Control Board certified the revised program Environmental Impact Report (EIR) for the General Order for Biosolids. Biosolids will continue to be eligible for a general order permit; however, under the revised conditions, the Board rejected the Class A alternative, therefore the Class B Biosolids will continue to be allowed in the State.

Commissioner Cabaldon announced that the Stockton Deep-Water Ship Channel final action would come before the Regional Water Quality Control Board (RWQCB) in September 2004. He said the Commission had an earlier presentation on hydrologic issues and the three causes of low dissolved oxygen problems in the channel: the flow diversions to principal Southern California water users through the Department of Water Resources (DWR); entry of algae and nutrients from ag users upstream on the San Joaquin River; and depth of the channel. There is a proposal before the Board to address the three problems including aeration in the deep-water channel. He said it was difficult to assign responsibility, but if the Corps of Engineers does not deal with the Deep-Water Ship Channel, then all responsibility would be borne by the upstream dischargers. He said that final action on the issue would come before the RWQCB in September 2004.

#### **6. Attorney General's Report**

Dan Siegel had nothing to report.

#### **7. Executive Director's Report**

Margit Aramburu distributed handouts:

- Pending Projects Memo
- Update on Boundary of the Legal Delta
- California Landowners Incentive Program
- Yolo Bypass Fieldtrip
- Comment Letters
- Letter to the City of Elk Grove requesting a meeting with the City Council
- CALFED Report
- Legislative Update

Ms. Aramburu announced that she and Mr. Eric Parfey spoke on the settlement of the lawsuit against the City of Lathrop for the approval of the River Islands Project. Mr. Parfey also provided Ms. Aramburu a press release on another lawsuit involving lands around the Delta that are using irrigation district waters from the Southern San Joaquin Irrigation District, which affect the cities of Escalon, Manteca, Lathrop and Tracy. The lawsuit will provide funds to offset water quality impacts, additionally, a \$2000 per acre ag mitigation fee for ag land conversion.

Ms. Aramburu reported that she spoke with the Sacramento Area Flood Control Agency (SAFCA) staff to discuss flood control in the lower Yolo Bypass. She announced that director Butch Hotchkis retired and was replaced by Stein Buer and she would be contacting SAFCA to make a presentation before the Commission.

The Delta Recreation Master Plan Request for Proposal (RFP) was released on July 12, 2004; applications are due 30 days later, with the contract due to be signed the first part of September. Funds will be coming from the Coast Guard through the Department of Boating and Waterways for Phase I (water/boating phase) of the contract.

Ms. Aramburu reported that she attended a water forum in Contra Costa County sponsored by Congresswoman Ellen Tauscher and attended a Dutch Slough Restoration Committee

Meeting in Oakley; she also briefed the Sacramento County Planning Commission staff on Delta issues.

Commissioner van Loben Sels asked if there were concerns raised on the existing Delta boundary that was established in 1959. Ms. Aramburu responded that there were issues raised because there are lands in the Delta that are covered by programs and other lands not included. She said the question that was raised how the boundaries were determined and it was decided that there should be additional research.

Commission Cabaldon stated that as the boundary issues become more of a focus, the Commission should take those issues to the next step and the boundaries should be modernized. He said that now was the time to have a subcommittee of the Commission to start thinking about the criteria for the guide and shape of the Delta, especially if the Commission will move into other issues.

Chairman McCarty concurred. He said he anticipated that the balance of the Secondary Zone will be consumed within the next ten to twelve years—which will make the boundary lines all the more important. He said the issues should be addressed now, while there is still political climate.

#### **8. CALFED Activities and Projects**

There was CALFED staff at the meeting; however, CALFED did provide an update handout

#### **9. Jones Tract Levee Break: Update and Possible Recommendations for Action**

Commissioner Kelly provided the Commission with a video and map showing the location of the levee breach. The Department of Water Resources (DWR) has closed the gap, evacuated as much water as it could during low tide by opening the breach, letting water out and closing it again when tides raised. She said DWR is currently in the process of shaping the levee and putting a road over the breach. Furthermore, each pump is running at 110 cubic feet per second (or 50,000 gallons per minute). It is hoped that the process will be completed by October 2004.

Ms. Aramburu stated that the incident at Jones Tract emphasizes the Commissions' role in redefining the Delta. She said with respect to Jones Tract, the Commission should think about its Plan and policies. She said that attached to the Commission's budget from the Legislature will be direction to look at the Plan and reevaluate which issues to bring to the forefront. She said part of the CALFED Program Plan references the preparation of an emergency plan for Delta levees, with a limited amount of funding set aside for emergencies (\$50,000 per incident). She also said she had been working with staff of the various water agencies that represent the Reclamation Districts (RD's) to come up with a list of ideas to enhance emergency activities associated with Delta levees. She asked the Commission to support the concepts in the staff report.

Commissioner van Loben Sels commented that the Levee Committee of the past had suggestions that mirrored suggestions of the staff report and in a letter to the editor by Chairman McCarty. He said the job of the Commission is to pull together all the suggestions,

establish priorities, then get action from CALFED to live up to its Record of Decision (ROD) agreement. He said that CALFED is not balanced between the needs of water quality, water reliability, ecosystem wildlife and Delta agriculture needs. He said it was time for the Commission to come up with a game plan and asked for suggestions, particularly from those Commissioners who represent State agencies.

Commissioner Kelly reported that CALFED levee program is managed by Curt Schmutte. She said that by law, CALFED must go through an annual assessment to make sure the program is balanced. Presently, CALFED is developing its program plans for years five through eight, and has acknowledged that the levee program needs attention. She further stated that none of the programs have received the level of funding that was anticipated or mentioned in the ROD. She said the program is an \$8 billion-dollar program. Mr. Tom Zuckerman and the BDPAC levee subcommittee are going over program plan to make it more aggressive and responsive to the potential of another levee breach. The status of program is acknowledged by CALFED but action of the program is in the development of the program plan.

Commissioner Cabaldon stated that he found Commissioner Kelly's comments encouraging but has found it to be contrary to what he has seen as a member of the Bay-Delta Public Advisory Committee (BDPAC). He said that Commissioner Coglianese as the BDPAC Levee Subcommittee Delta Levees Committee co-chair, has been working hard to raise the exact issues as mentioned by Commissioner van Loben Sels, but has had difficulty getting the issues before the full BDPAC. He said he hoped the levee breach issue will get the attention of the other stakeholders and not be thought of as only a Delta. He said Ms. Aramburu's proposal made sense but the larger issues deal with attention and financing. He suggested adding reuse of dredged material and a streamlined regulatory process to the draft memo.

Commissioner Coglianese said she found it frustrating in trying to elevate the levee situation in discussions. She said there has been a desire to engage the other BDPAC committee members in building a knowledge of levees. She said it was foolish to spend three times the maintenance budget to fix one breach; however, now is the time to elevate the issue, and welcomed the Commissions involvement. One thing under discussion was to conduct a workshop and felt the time was right to do so. She added that the Commission should consider co-sponsoring the workshop with the BDPAC Levees subcommittee.

Commission Shaffer announced that he was glad to be back from his three-month assignment with the California Performance Review. He said he went on a Department of Agriculture tour that included staffers from USEPA and during the tour, the Jones Tract situation was acknowledged. He said that the CALFED program decided on a "Delta conveyance" approach and the levee program has lagged furthest behind in terms of CALFED implementation. Commissioner Coglianese added that there is a draft funding options report circulating suggesting that the funding section add reference to the ten-year funding plan with the potential for user fees, which could add up to more money programmed into the levee program. She said that readiness for the emergency response would also be addressed. The draft should be approved on August 6, 2004.

Chairman McCarty added that he felt the problems with Jones Tract were that no one could move forward until funding was in place, and time is critical on levee breach matters. He said he saw this as a failure on the part of the Commission to not bring the issues to the forefront. He urged the Commission to “ring the bell” louder and harder because the question is not if there will be another levee breach, but when.

Commissioner Kelly followed up on Commissioner McCarty’s comments by indicating that the Jones Tract was one of the most well maintained levees and there was no indication that it would be a problem. She said there are hard decisions on how to prioritize the funds as to which islands come first. She encouraged the Commission the think about the information needed and approaches to be taken to address the issue.

Commissioner McCarty said he recognized the risks in establishing and maintaining levees. He said that 1,100 miles comprise the Delta and agreed with Commissioner Kelly that Jones Tract is one of the most well maintained islands. He said the Commission should raise its level of diligence and commit the funds to levee protection so that there is a planning mechanism and resources in place to mitigate any loss.

Commissioner Coglianese said that the ROD is behind schedule. She said there is no one hundred percent guarantee that will prevent a breach in the levees and the only thing to do is to improve the structure of levees to the standard set by the ROD and commit the money for improving planning for emergency response.

Commissioner van Loben Sels recommended that the Commission go back to CALFED to make them deliver on the ROD agreement. He said that since the Commission has not made CALFED responsible, the Levees program is out of balance.

Commissioner Shaffer asked if the Commission had the capacity to bring in other agencies to help with developing an initial framework for an implementation plan on levee issues. Ms. Aramburu responded that CALFED finance staff is developing a financing options strategy and a ten-year financing plan. She said this area is where the Commission’s focus should be because the ten-year financing plan will serve as the basis for future requests for funding from State taxpayers and for receiving money from the federal government. She said the immediate strategy is to ask that any and all tasks be reflected in the financing strategy. She said the Commission should also, immediately send specific suggestions; reconvene the Levee Committee; convene a workshop to bring together the CALFED levee program and work with RD’s to come up with a set of criteria for how to prioritize the spending of any money.

Commissioner Shaffer asked if there had been any type of analysis or look back exercise and if there weren’t, would there be a role the Commission could play. Ms. Aramburu said that she thought there would be legislative hearings in the fall. Commissioner Kelly responded that a hearing would be convened on August 3, 2004 by Senator Michael Machado and DWR Director Lester Snow.

Commissioner Kelly asked if there was an emergency fund with the State for flood fighting. She said there is no large emergency fund set aside in the State. Ms. Aramburu responded that there is currently \$200,000 per year as authorized by AB360.

Chairman McCarty opened the public hearing

Lisa Kirk, Bethel Island resident said she was concerned with Jones Tract and Federal Emergency Management Agency (FEMA) compliance. She said it was her understanding that if an island's levees are FEMA compliant, then FEMA assist in costs incurred in a flood. She further stated that Bethel Island is not FEMA compliant, has 130 encroaching structures and if it had a breach, she didn't know who would pay for repairs. She asked if the landowners or RD were responsible for the maintenance of an island, because Bethel needed oversight. She said she agreed with the Commission's discussion on levees, and would like to see a representative from FEMA included in the proposed workshop.

Danielle Domenic, structural engineer stated that she would like to see the model used for the Northridge earthquake used to secure resources to understand and update levees. She said she was also concerned because she has not seen public and technical interest in the levee breach situation.

Harry Moore, stated that he felt Delta levees are very important; however they have been sinking for many years. He said there used to be seven tributary flows but only two are left and many Delta lands are 25 feet below sea level. He said that at this rate, the lands would be inundated with seawater, affecting 25 million people who will lose drinking water from the Delta. He said the Commission should work on the water situation, starting with fresh water because unless the Commission tackles fresh water flow, subsidence and silting, then there will be more problems.

Tom Trost, Bradford Island resident said he was concerned and confused with county government's role because of the added code enforcement rules on Bradford Island. He said he had spoken to Commissioner Glover regarding CALFED, new code enforcements, and has participated in the cleanup of Bradford Island. He said Bradford has cracks in the levees, and is curious as to what part CALFED is playing in levee maintenance.

Mitch Bouyer, Bradford Island resident said he is concerned because he would like to see the ability of Commission to allow property owners on levees to steward the levees, look for problems, and report the problems to the proper authorities.

Chairman McCarty closed the public hearing.

It was moved by Commissioner Coglianese that the Commission send recommendations to the CALFED Bay Delta Authority Levees Program to revive the Commission's Levee Committee and do advanced planning for a workshop to be co-sponsored by CALFED and the Commission. The motioned was seconded by Commissioner Cabaldon and approved unanimously by voice vote.

#### **10. Update on Pending Legislation**

Ms. Aramburu announced that there had been no changes in legislation affecting the Commission (AB 2476 and SB 86). The Commission has taken a position on both bills at previous meetings. There has been discussion on language for SB 86, but no changes to date.

Commissioner Coglianese said that after checking a committee report of SB 86, she was surprised to see that the City of Rio Vista was not on record as supporting the bill, even though the City had sent letters of support for earlier versions of the bill. She said she would like the Commission to send a letter of support regarding SB 86.

Commissioner Cabaldon asked if there has been any response to the Commission's suggested changes to AB 2476. He said the Commission should continue to press the issue regarding the changes because (a) the wrong State Agency is listed for historic Preservation and (b) the Commission has never appointed a State Agency representative because of conflict of interest problems. Ms. Aramburu responded that she discussed the changes with Assemblymember Wolk's staff; however, there have been no changes made to the bill. She said the Commission could send another letter reiterating the changes.

Commissioner Kelly asked if the Commission would be averse to amending AB 2476 as a mechanism to gaining flexibility on approving general plan amendments. Commissioner Cabaldon said that doing so would be problematic because it is too late in the legislative session to raise the issue because it might raise the hackles of the cities and counties the Commission is concerned about.

Chairman McCarty said he agreed with Commissioner McGowan that the Commission reinforce its position on the various bills affecting the Commission. He said he had no problem with Commissioner Kelly's suggestion to but felt the Commission should not go on record with her suggested changes.

#### **11. Report from Delta Land Use Impacts Committee Regarding Review of Projects in the Primary and Secondary Zones**

Ms. Aramburu reported that the Committee met twice and is reviewing the current process for evaluating projects in the Primary and Secondary Zones. Staff put together a compendium of large-scale residential and commercial development in the Secondary Zone, which are directly adjacent to the Primary Zone. She said she hoped the Committee would be able to come back to the Commission in September with recommendations of processes that would entail prioritization of projects that come before the Commission. She said she was advised by legal staff that the Commission can review projects that are directly appealable to the Commission, as long as it is made clear the Commission's comments are advisory and not showing prejudice toward the particular project. Additionally, the Committee would like to review the characteristics by which it could evaluate projects in the Secondary Zone and how to determine how those projects would have an impact on the Primary Zone. There is no recommendation but the Committee has asked for input from the Commission.

Commissioner Coglianesi said there was interest from the public. She said it is a sign that the Commission is treading into areas where there is strong opinion; therefore, the Committee is trying its best to be careful, thorough, and open to deliberations.

Commissioner van Loben Sels said the concern of the Committee should not be project by project, but the cumulative impact of changes of the Secondary Zone and how it affects the Primary Zone.

Commissioner Kelly said that a major concern is the highways and the amount of transportation and how it relates to the impact of water quality in the Primary Zone.

Commissioner Shaffer said there continues to be debate among state agencies on the subject of land use changes, especially when converting agriculture to less intensive or single purpose uses, and whether or not that is an impact. He said the issue that would have to be tackled by the Commission is exactly what constitutes a conversion, and what the thresholds of impacts would be and what the mechanisms are to assess those. He said the Commission should review the responses to comments on the Hamilton City Project to gain a good insight into these types of issues.

Chairman McCarty suggested the Committee stay the course and continue to pursue the cumulative impacts and take the issue on, it could add value to the process as it faces challenges when moving forward. Chairman McCarty asked for public comments.

Lisa Kirk commented that one problem Bethel Island sees is that people who are zoned agricultural do not need to get a permit for grading—which destroys wetlands. She said the Commission would likely see this problem in the future as lands are developed. She asked that the Commission put a stop/loss in place, or develop a mechanism with the Counties, that agricultural lands will be evaluated prior to the issuance of grading permits. Chairman McCarty thanked her for the suggestion and said that the Farm Service Agency, Army Corp of Engineers, and the Natural Resource Conservation Service would be interested in the wetlands.

## **12. Budget and Work Plan for FY 2004-05**

This item was tabled until the September 23, 2004 meeting.

## **13. Adoption of Environmental Justice Policy**

This item was tabled until the September 23, 2004 meeting.

## **14. Adjourn**

The meeting was adjourned at 8:30 p.m.